

1 AN ACT concerning viatical settlements.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Viatical Settlements Act is amended by
5 changing Sections 5, 10, 15, 20, 35, 40, 45, and 50 and
6 adding Sections 47 and 49 as follows:

7 (215 ILCS 158/5)

8 Sec. 5. Definitions. As used in this Act, the following
9 definitions apply:

10 "Advertising" means any written, electronic, or printed
11 communication or any communication by means of recorded
12 telephone messages or transmitted on radio, television, the
13 Internet, or similar communications media, including film
14 strips, motion pictures and videos, published, disseminated,
15 circulated, or placed before the public, directly or
16 indirectly, for the purpose of creating an interest in or
17 inducing a person to purchase or sell a life insurance policy
18 or an interest in a life insurance policy pursuant to a
19 viatical settlement contract or a viatical settlement
20 purchase agreement.

21 "Business of viatical settlements" means an activity
22 involved in, but not limited to, the offering, solicitation,
23 negotiation, procurement, effectuation, purchasing,
24 investing, financing, monitoring, tracking, underwriting,
25 selling, transferring, assigning, pledging, hypothecating or
26 in any other manner, of viatical settlement contracts or
27 purchase agreements.

28 "Chronically ill" means:

29 (1) being unable to perform at least 2 activities
30 of daily living (i.e., eating, toileting, transferring,
31 bathing, dressing, or continence);

1 (2) requiring substantial supervision to protect
2 the individual from threats to health and safety due to
3 severe cognitive impairment; or

4 (3) having a level of disability similar to that
5 described in paragraph (1) as determined by the Secretary
6 of Health and Human Services;

7 "Director" means the Director of Insurance.

8 "Financing entity" means an underwriter, placement agent,
9 lender, purchaser of securities, purchaser of a policy or
10 certificate from a viatical settlement provider, credit
11 enhancer, or any entity that has a direct ownership in a
12 policy or certificate that is the subject of a viatical
13 settlement contract, but:

14 (A) whose principal activity related to the
15 transaction is providing funds to effect the
16 viatical settlement or purchase of one or more
17 viaticated policies; and

18 (B) who has an agreement in writing with one
19 or more licensed viatical settlement providers to
20 finance the acquisition of viatical settlement
21 contracts.

22 Financing entity does not include a non-accredited
23 investor or viatical settlement purchaser.

24 "Fraudulent viatical settlement act" includes any of the
25 following:

26 (1) Acts or omissions committed by any person who,
27 knowingly or with intent to defraud, for the purpose of
28 depriving another of property or for pecuniary gain,
29 commits, or permits its employees or its agents to engage
30 in acts including:

31 (A) presenting, causing to be presented, or
32 preparing with knowledge or belief that it will be
33 presented to or by a viatical settlement provider,
34 viatical settlement broker, viatical settlement

1 purchaser, viatical settlement investment agent,
2 financing entity, insurer, insurance producer, or
3 any other person false material information or
4 concealing material information, as part of, in
5 support of, or concerning a fact material to one or
6 more of the following:

7 (i) an application for the issuance of a
8 viatical settlement contract or insurance
9 policy;

10 (ii) the underwriting of a viatical
11 settlement contract or insurance policy;

12 (iii) a claim for payment or benefit
13 pursuant to a viatical settlement contract or
14 insurance policy;

15 (iv) premiums paid on an insurance policy
16 or as a result of a viatical settlement
17 purchase agreement;

18 (v) payments and changes in ownership or
19 beneficiary made in accordance with the terms
20 of a viatical settlement contract, viatical
21 settlement purchase agreement, or insurance
22 policy;

23 (vi) the reinstatement or conversion of
24 an insurance policy;

25 (vii) the solicitation, offer,
26 effectuation, or sale of a viatical settlement
27 contract, insurance policy, or viatical
28 settlement purchase agreement;

29 (viii) the issuance of written evidence
30 of viatical settlement contract, viatical
31 settlement purchase agreement, or insurance; or

32 (ix) a financing transaction; or

33 (B) employing any device, scheme, or artifice
34 to defraud related to viaticated policies.

1 (2) In the furtherance of a fraud or to prevent the
2 detection of a fraud any person commits or permits its
3 employees or its agents to;

4 (A) remove, conceal, alter, destroy, or
5 sequester from the Director the assets or records of
6 a licensee or other person engaged in the business
7 of viatical settlements;

8 (B) misrepresent or conceal the financial
9 condition of a licensee, financing entity, insurer,
10 or other person;

11 (C) transact the business of viatical
12 settlements in violation of laws requiring a
13 license, certificate of authority or other legal
14 authority, for the transaction of the business of
15 viatical settlements; or

16 (D) file with the Director or the chief
17 insurance regulatory official of another
18 jurisdiction a document containing false information
19 or otherwise conceal information about a material
20 fact from the Director.

21 (3) Embezzlement, theft, misappropriation, or
22 conversion of moneys, funds, premiums, credits, or other
23 property of a viatical settlement provider, insurer,
24 insured, viator, insurance policyowner, or any other
25 person engaged in the business of viatical settlements or
26 insurance.

27 (4) Recklessly entering into, brokering, or
28 otherwise dealing in a viatical settlement contract, the
29 subject of which is a life insurance policy that was
30 obtained by presenting false information concerning any
31 fact material to the policy or by concealing, for the
32 purpose of misleading another, information concerning any
33 fact material to the policy, when the viator or the
34 viator's agent intended to defraud the policy's issuer.

1 "Recklessly" means engaging in the conduct in conscious
2 and clearly unjustifiable disregard of a substantial
3 likelihood of the existence of the relevant facts or
4 risks, such disregard involving a gross deviation from
5 acceptable standards of conduct.

6 (5) Attempting to commit, assisting, aiding or
7 abetting in the commission of, or conspiracy to commit
8 the acts or omissions specified in this definition.

9 "Person" means any natural or artificial entity
10 including, but not limited to, individuals, partnerships,
11 associations, trusts, or corporations.

12 "Terminally ill" means having an illness or sickness that
13 can reasonably be expected to result in death in 24 months or
14 less.

15 "Viatical settlement agent" means an individual,
16 partnership, corporation, or other entity who through
17 appointment by at least one viatical settlement provider and
18 for a fee, commission, or other valuable consideration,
19 offers or advertises the availability of viatical
20 settlements, introduces viators to viatical settlement
21 providers, or offers or attempts to negotiate viatical
22 settlements between a viator and one or more viatical
23 settlement providers. "Viatical settlement agent" does not
24 include an attorney licensed to practice law, a public
25 accountant as defined in the Illinois Public Accounting Act,
26 or a person licensed under the Debt Management Service Act
27 retained to represent the viator whose compensation is not
28 paid by the viatical settlement provider.

29 "Viatical settlement broker" means a person that on
30 behalf of a viator and for a fee, commission, or other
31 valuable consideration offers or attempts to negotiate
32 viatical settlement contracts between a viator and one or
33 more viatical settlement providers. Notwithstanding the
34 manner in which the viatical settlement broker is

1 compensated, a viatical settlement broker is deemed to
 2 represent only the viator and owes a fiduciary duty to the
 3 viator to act according to the viator's instructions and in
 4 the best interest of the viator. The term does not include an
 5 attorney, certified public accountant, or a financial planner
 6 accredited by a nationally recognized accreditation agency
 7 who is retained to represent the viator and whose
 8 compensation is not paid directly or indirectly by the
 9 viatical settlement provider or purchaser.

10 "Viatical settlement contract" means a written agreement
 11 establishing the terms under which compensation or anything
 12 of value will be paid, which compensation or value is less
 13 than the expected death benefit of the insurance policy or
 14 certificate, in return for the viator's assignment, transfer,
 15 sale, devise, or bequest of the death benefit or ownership of
 16 any portion of the insurance policy or certificate of
 17 insurance. A viatical settlement contract also includes a
 18 contract for a loan or other financing transaction with a
 19 viator secured primarily by an individual or group life
 20 insurance policy, other than a loan by a life insurance
 21 company pursuant to the terms of the life insurance contract,
 22 or a loan secured by the cash value of a policy. A viatical
 23 settlement contract includes an agreement with a viator to
 24 transfer ownership or change the beneficiary designation at a
 25 later date regardless of the date that compensation is paid
 26 to the viator. entered--into-between-a-viatical-settlement
 27 provider-and-a-person-who-owns-a-life-insurance-policy-or-who
 28 owns-or-is-covered-under-a-group-policy, insuring-the-life-of
 29 a-person-who-has-a-catastrophic-or-life--threatening--illness
 30 or--condition.--The-agreement-shall-establish-the-terms-under
 31 which-the-viatical-settlement-provider-will-pay--compensation
 32 or--anything--of--value,--which-compensation-or-value-is-less
 33 than-the-expected-death-benefit-of-the--insurance--policy--or
 34 certificate,--in--return--for--the--policyowner's-assignment,

1 transfer, sale, devise, or bequest of the death benefit or
2 ownership of the insurance policy or certificate to the
3 viatical settlement provider.

4 "Viatical settlement provider" means a person, other than
5 a viator, that enters into or effectuates a viatical
6 settlement contract. Viatical settlement provider does not
7 include:

8 (1) a bank, savings bank, savings and loan
9 association, credit union, or other licensed lending
10 institution that takes an assignment of a life insurance
11 policy as collateral for a loan;

12 (2) the issuer of a life insurance policy providing
13 accelerated benefits under the Illinois Insurance Code
14 and pursuant to the contract;

15 (3) an authorized or eligible insurer that provides
16 stop loss coverage to a viatical settlement provider,
17 purchaser, financing entity, special purpose entity, or
18 related provider trust;

19 (4) a natural person who enters into or effectuates
20 no more than one agreement in a calendar year for the
21 transfer of life insurance policies for any value less
22 than the expected death benefit;

23 (5) a financing entity;

24 (6) a special purpose entity;

25 (7) a related provider trust;

26 (8) a viatical settlement purchaser; or

27 (9) an accredited investor or qualified
28 institutional buyer as defined respectively in Regulation
29 D, Rule 501 or Rule 144A of the Federal Securities Act of
30 1933, as amended, and who purchases a viaticated policy
31 from a viatical settlement provider.

32 "Viatical settlement provider" means an individual,
33 partnership, corporation, or other entity that enters into an
34 agreement with a person who owns a life insurance policy, or

1 who--owns--or--is--covered-under-a-group-policy,-insuring-the
 2 life-of-a-person-who-has-a-catastrophic-or--life--threatening
 3 illness--or--condition,-under-the-terms-of-which-the-viatical
 4 settlement-provider-pays-compensation-or-anything--of--value,
 5 which--compensation--or-value-is-less-than-the-expected-death
 6 benefit-of-the-insurance-policy-or-certificate,-in-return-for
 7 the-policyowner's--assignment,-transfer,-sale,-devise,-or
 8 bequest--of--the--death-benefit-or-ownership-of-the-insurance
 9 policy-or-certificate-to-the--viatical--settlement--provider.
 10 "Viatical-settlement-provider"-does-not-include:

11 (1)--a--licensed--insurance--company,-bank,-savings
 12 bank,-savings--and--loan--association,-credit--union,
 13 commercial--finance--company--or--other--licensed-lending
 14 institution,-investment--company--registered--under--the
 15 Investment-Company-Act-of-1940,-pension--plan--qualified
 16 under--Section--401(a)--of--the--Internal-Revenue-Code-of
 17 1986,-or-trust-funding-such-a-pension-plan-that-takes--an
 18 assignment--of-a-life-insurance-policy-only-as-collateral
 19 for-a-loan;

20 (2)--sophisticated-investors-meeting--the--standards
 21 of--subsection--H-of-Section-4-of-the-Illinois-Securities
 22 Law-of-1953-who-invest-in-or-lend-to-a-licensed--viatical
 23 settlement--provider--or--other--persons--who--so--invest
 24 pursuant-to-a-registered-security-offering;-or

25 (3)--the-issuer-of-a-life-insurance-policy-providing
 26 accelerated-benefits-under-the-Illinois-Insurance-Code.

27 "Viatical settlement purchaser" means a person who gives
 28 a sum of money as consideration for a life insurance policy
 29 or an interest in the death benefits of a life insurance
 30 policy, or a person who owns or acquires or is entitled to a
 31 beneficial interest in a trust that owns a viatical
 32 settlement contract or is the beneficiary of a life insurance
 33 policy that has been or will be the subject of a viatical
 34 settlement contract, for the purpose of deriving an economic

1 benefit.

2 "Viaticated policy" means a life insurance policy held by
3 a viatical settlement provider, directly or indirectly,
4 through a viatical settlement contract.

5 "Viator" means a person who owns a life insurance policy,
6 or who owns or is covered under a group policy, and insuring
7 ~~the--life-of-a-person-with-a-catastrophie-or-life-threatening~~
8 ~~illness-or-condition~~ who enters into an agreement under which
9 the viatical settlement provider will pay compensation or
10 anything of value, which compensation or value is less than
11 the expected death benefit of the insurance policy or
12 certificate, in return for the viator's assignment, transfer,
13 sale, devise, or bequest of the death benefit or ownership of
14 the insurance policy or certificate to the viatical
15 settlement provider.

16 (Source: P.A. 89-484, eff. 6-21-96; 90-545, eff. 1-1-98.)

17 (215 ILCS 158/10)

18 Sec. 10. License requirements.

19 (a) No individual, partnership, corporation, or other
20 entity may operate aet as a viatical settlement provider
21 without first having obtained a license from the Director.

22 (b) Application for a viatical settlement provider
23 license shall be made to the Director by the applicant on a
24 form prescribed by the Director. The application shall be
25 accompanied by a fee of \$1,500, which shall be deposited into
26 the Insurance Producer Administration Fund.

27 (c) Viatical settlement providers' licenses may be
28 renewed from year to year on the anniversary date upon (1)
29 submission of renewal forms prescribed by the Director and
30 (2) payment of the annual renewal fee of \$750, which shall be
31 deposited into the Insurance Producer Administration Fund.
32 Failure to pay the fee within the terms prescribed by the
33 Director shall result in the expiration of the license.

1 (d) Applicants for a viatical settlement provider's
2 license shall provide such information as the Director may
3 require. The Director shall have authority, at any time, to
4 require the applicant to fully disclose the identity of all
5 stockholders, partners, officers, and employees. The
6 Director may, in the exercise of discretion, refuse to issue
7 a license in the name of any firm, partnership, or
8 corporation if not satisfied that an officer, employee,
9 stockholder, or partner thereof who may materially influence
10 the applicant's conduct meets the standards of this Act.

11 (e) A viatical settlement provider's license issued to a
12 partnership, corporation, or other entity authorizes all
13 members, officers, and designated employees to act as
14 viatical settlement providers under the license. All those
15 persons must be named in the application and any supplements
16 thereto.

17 (f) Upon the filing of an application for a viatical
18 settlement provider's license and the payment of the license
19 fee, the Director shall make an investigation of the
20 applicant and may issue a license if the Director finds that
21 the applicant:

- 22 (1) has provided a detailed plan of operation;
- 23 (2) is competent and trustworthy and intends to act
24 in good faith in the capacity authorized by the license
25 applied for;
- 26 (3) has a good business reputation and has had
27 experience, training, or education so as to be qualified
28 in the business for which the license is applied for; and
- 29 (4) if a corporation, is a corporation incorporated
30 under the laws of this State or a foreign corporation
31 authorized to transact business in this State.

32 (g) The Director may not issue a license to a
33 nonresident applicant, unless a written designation of an
34 agent for service of process is filed and maintained with the

1 Director or the applicant has filed with the Director the
2 applicant's written irrevocable consent that any action
3 against the applicant may be commenced against the applicant
4 by service of process on the Director.

5 (h) A viatical settlement provider must assume
6 responsibility for all actions of its appointed viatical
7 settlement agents associated with a viatical settlement.

8 (i) A viatical settlement provider, viatical settlement
9 broker, or viatical settlement investment agent shall provide
10 to the Director new or revised information about officers,
11 10% or more stockholders, partners, directors, members, or
12 designated employees within 30 days of a change in any of
13 them.

14 (Source: P.A. 89-484, eff. 6-21-96.)

15 (215 ILCS 158/15)

16 Sec. 15. License revocation.

17 (a) The Director has the right to suspend, revoke, or
18 refuse to renew the license of any viatical settlement
19 provider if the Director finds that:

20 (1) there was any misrepresentation in the
21 application for the license;

22 (2) the holder of the license has been guilty of
23 fraudulent or dishonest practices, is subject to a final
24 administrative action, or is otherwise shown to be
25 untrustworthy or incompetent to act as a viatical
26 settlement provider;

27 (3) the licensee demonstrates a pattern of
28 unreasonable or untimely payments to policyowners or
29 their designees;

30 (4) (Blank); the--licensee-has-been-convicted-of-a
31 felony-or-any-misdemeanor-of-which-criminal-fraud--is--an
32 element;-or

33 (5) the licensee has violated any of the provision

1 of this Act;

2 (6) the licensee no longer meets the requirements
3 for initial licensure;

4 (7) the licensee or any officer, partner, member,
5 or key management personnel has violated any provision of
6 this Act;

7 (8) the licensee or any officer, partner, member,
8 or key management personnel has been found guilty of, or
9 has pleaded guilty or nolo contendere to, any felony, or
10 to a misdemeanor involving fraud or moral turpitude,
11 regardless of whether a judgment of conviction has been
12 entered by the court; or

13 (9) the viatical settlement provider has failed to
14 honor contractual obligations set out in a viatical
15 settlement contract or a viatical settlement purchase
16 agreement;

17 (b) Before the Director denies a license application or
18 suspends, revokes, or refuses to renew the license of a
19 viatical settlement provider, the Director shall conduct a
20 hearing in accordance with the Illinois Administrative
21 Procedure Act.

22 (Source: P.A. 89-484, eff. 6-21-96.)

23 (215 ILCS 158/20)

24 Sec. 20. Approval of viatical settlements contracts. A
25 person shall not use a viatical settlement contract or
26 provide to a viator a disclosure statement form in this State
27 unless filed with and approved by the Director. The Director
28 shall disapprove a viatical settlement contract form or
29 disclosure statement form if, in the Director's opinion, the
30 contract or provisions contained therein are unreasonable,
31 contrary to the interests of the public, or otherwise
32 misleading or unfair to the viator. At the Director's
33 discretion, the Director may require the submission of

1 advertising material. No viatical settlement provider may use
 2 a viatical settlement contract in this State unless it has
 3 been filed with and approved by the Director. A viatical
 4 settlement contract form filed with the Director shall be
 5 deemed approved if it has not been disapproved within 60 days
 6 of the filing. The Director shall disapprove a viatical
 7 settlement contract form if, in the Director's opinion, the
 8 contract or provisions contained therein are unreasonable,
 9 contrary to the interests of the public, or otherwise
 10 misleading or unfair to the policyowner.

11 (Source: P.A. 89-484, eff. 6-21-96.)

12 (215 ILCS 158/35)

13 Sec. 35. Disclosure.

14 (a) With each application for a viatical settlement, a
 15 viatical settlement provider or viatical settlement broker
 16 shall provide the viator with at least the following
 17 disclosures no later than the time the application for the
 18 viatical settlement contract is signed by all parties. The
 19 disclosures shall be provided in a separate document that is
 20 signed by the viator and the viatical settlement provider or
 21 viatical settlement broker, and shall provide the following
 22 information: Prior to the time a viatical settlement
 23 application is taken or the time an offer is made by a
 24 viatical settlement provider to a person considering a
 25 viatical settlement, whichever is later, the following
 26 information shall be provided by the viatical settlement
 27 provider or its agent:

28 (1) the affiliation, if any, between the viatical
 29 settlement provider and the issuer of an insurance policy
 30 to be viaticated;

31 (2) if an insurance policy to be viaticated has
 32 been issued as a joint policy or involves family riders
 33 or any coverage of a life other than that insured under

1 the policy to be viaticated, the viator must be informed
2 of the possible loss of coverage on such other lives and
3 advised to consult with his or her insurance producer or
4 the company issuing the policy for advice on the proposed
5 viatication.

6 (b) A viatical settlement provider shall disclose all of
7 the following information to the viator no later than the
8 date the viatical settlement contract is signed by all
9 parties:

10 (1) Possible alternatives to viatical settlement
11 contracts for persons with catastrophic or life
12 threatening illnesses including, but not limited to,
13 accelerated benefits offered by the issuer of the life
14 insurance policy.

15 (2) The fact that some or all of the proceeds of
16 the viatical settlement may be taxable and that
17 assistance should be sought from a personal tax advisor.

18 (3) The fact that the viatical settlement could be
19 subject to the claims of creditors.

20 (4) The fact that receipt of a viatical settlement
21 may adversely effect the recipients' eligibility for
22 Medicaid or other government benefits or entitlements and
23 that advice should be obtained from the appropriate
24 agencies.

25 (5) The policyowner's right to rescind a viatical
26 settlement contract within 30 days of the date it is
27 executed by all parties or within 15 days of the receipt
28 of the viatical settlement proceeds by the viator,
29 whichever is less, as provided in subsection (c) of
30 Section 45. If the insured dies during the rescission
31 period, the settlement contract shall be deemed to have
32 been rescinded, subject to repayment of all viatical
33 settlement proceeds and any premiums, loans, and loan
34 interest to the viatical settlement provider or

1 purchaser.

2 (6) The date by which the funds will be available
3 to the viator and the source of the funds.

4 (7) A description of any policy benefits other than
5 death benefits and non-forfeiture values in the policy to
6 be viaticated that may be of value, such as additional
7 purchase benefits, waiver of premium benefits, accidental
8 death benefits, or conversion features. The viatical
9 settlement provider shall also disclose its interest in
10 such benefits and any options available to the viator for
11 additional compensation or contractual reservation to the
12 viator of policy options or other rights.

13 (c) A viatical settlement agent shall disclose all of
14 the following information to the viator no later than the
15 date the viatical settlement contract is signed by all
16 parties:

17 (1) The identity of the viatical settlement agent.

18 (2) The identity of the viatical settlement
19 provider.

20 (3) The nature of the relationship between the
21 viatical settlement agent and viatical settlement
22 provider.

23 (d) Funds shall be sent to the viator within 3 business
24 days after the viatical settlement provider has received the
25 insurer or group administrator's acknowledgment that
26 ownership of the policy or interest in the certificate has
27 been transferred and the beneficiary has been designated.

28 (e) Disclosure to a viator shall include distribution of
29 a brochure describing the process of viatical settlements.
30 The National Association of Insurance Commissioners' form for
31 the brochure shall be used unless one is developed by the
32 Director.

33 (f) The disclosure document shall contain the following
34 language: "All medical, financial, or personal information

1 solicited or obtained by a viatical settlement provider or
2 viatical settlement broker about an insured, including the
3 insured's identity or the identity of family members, a
4 spouse, or a significant other may be disclosed as necessary
5 to effect the viatical settlement between the viator and the
6 viatical settlement provider. If you are asked to provide
7 this information, you will be asked to consent to the
8 disclosure. The information may be provided to someone who
9 buys the policy or provides funds for the purchase. You may
10 be asked to renew your permission to share information every
11 2 years."

12 (g) The insured may be contacted by either the viatical
13 settlement provider or broker or its authorized
14 representative for the purpose of determining the insured's
15 health status. This contact is limited to once every 3 months
16 if the insured has a life expectancy of more than one year,
17 and no more than once per month if the insured has a life
18 expectancy of one year or less.

19 (h) A viatical settlement provider shall provide the
20 viator with at least the following disclosures no later than
21 the date the viatical settlement contract is signed by all
22 parties. The disclosures shall be conspicuously displayed in
23 the viatical settlement contract or in a separate document
24 signed by the viator and the viatical settlement provider or
25 viatical settlement broker and shall provide all of the
26 following information:

27 (1) The affiliation, if any, between the viatical
28 settlement provider and the issuer of the insurance
29 policy to be viaticated.

30 (2) The name, address, and telephone number of the
31 viatical settlement provider.

32 (3) A disclosure to a prospective viator of the
33 amount and method of calculating the broker's
34 compensation. The term "compensation" includes anything

1 of value paid or given to a viatical settlement broker
2 for the placement of a policy.

3 (4) A disclosure that, if an insurance policy to be
4 viaticated has been issued as a joint policy or involves
5 family riders or any coverage of a life other than the
6 insured under the policy to be viaticated, informs the
7 viator of the possible loss of coverage on the other
8 lives under the policy and shall be advised to consult
9 with his or her insurance producer or the insurer issuing
10 the policy for advice on the proposed viatical
11 settlement.

12 (5) A disclosure that states the dollar amount of
13 the current death benefit payable to the viatical
14 settlement provider under the policy or certificate. If
15 known, the viatical settlement provider shall also
16 disclose the availability of any additional guaranteed
17 insurance benefits, the dollar amount of any accidental
18 death and dismemberment benefits under the policy or
19 certificate, and the viatical settlement provider's
20 interest in those benefits.

21 (6) A disclosure of the name, business address, and
22 telephone number of the independent third party escrow
23 agent, and the fact that the viator or owner may inspect
24 or receive copies of the relevant escrow or trust
25 agreements or documents.

26 (i) If the viatical settlement provider transfers
27 ownership or changes the beneficiary of the insurance policy,
28 the viatical settlement provider shall communicate the change
29 in ownership or beneficiary to the insured within 20 days
30 after the change.

31 (j) A viatical settlement provider shall provide the
32 viatical settlement purchaser with at least the following
33 disclosures prior to the date the viatical settlement
34 purchase agreement is signed by all parties. The disclosures

1 shall be conspicuously displayed in any viatical purchase
2 contract or in a separate document signed by the viatical
3 settlement purchaser and viatical settlement provider or
4 viatical settlement investment agent, and shall make all of
5 the following disclosures to the viatical settlement
6 purchaser:

7 (1) The purchaser will receive no returns, such as
8 dividends and interest, until the insured dies.

9 (2) The actual annual rate of return on a viatical
10 settlement contract is dependent upon an accurate
11 projection of the insured's life expectancy, and the
12 actual date of the insured's death. An annual
13 "guaranteed" rate of return is not determinable.

14 (3) The viaticated life insurance contract should
15 not be considered a liquid purchase since it is
16 impossible to predict the exact timing of its maturity
17 and the funds probably are not available until the death
18 of the insured. There is no established secondary market
19 for resale of these products by the purchaser.

20 (4) The purchaser may lose all benefits or may
21 receive substantially reduced benefits if the insurer
22 goes out of business during the term of the viatical
23 investment.

24 (5) The purchaser is responsible for payment of the
25 insurance premium or other costs related to the policy,
26 if required by the terms of the viatical purchase
27 agreement. These payments may reduce the purchaser's
28 return. If a party other than the purchaser is
29 responsible for the payment, the name and address of that
30 party also shall be disclosed.

31 (6) The purchaser is responsible for payment of the
32 insurance premiums or other costs related to the policy
33 if the insured returns to health and the amount of those
34 premiums, if applicable.

1 (7) The name and address of any person providing
2 escrow services and the relationship to the broker.

3 (8) The amount of any trust fees or other expenses
4 to be charged to the viatical settlement purchaser shall
5 be disclosed.

6 (9) A disclosure of whether the purchaser is
7 entitled to a refund of all or part of his or her
8 investment under the settlement contract if the policy is
9 later determined to be null and void.

10 (10) A disclosure that group policies may contain
11 limitations or caps in the conversion rights, that
12 additional premiums may have to be paid if the policy is
13 converted, that discloses name the party responsible for
14 the payment of the additional premiums and, if a group
15 policy is terminated and replaced by another group
16 policy, that there may be no right to convert the
17 original coverage.

18 (11) A disclosure of the risks associated with
19 policy contestability including, but not limited to, the
20 risk that the purchaser will have no claim or only a
21 partial claim to death benefits should the insurer
22 rescind the policy within the contestability period.

23 (12) A disclosure of whether the purchaser will be
24 the owner of the policy in addition to being the
25 beneficiary, and if the purchaser is the beneficiary only
26 and not also the owner, the special risks associated with
27 that status, including, but not limited to, the risk that
28 the beneficiary may be changed or the premium may not be
29 paid.

30 (13) A description of the experience and
31 qualifications of the person who determines the life
32 expectancy of the insured, i.e., in-house staff,
33 independent physicians, and specialty firms that weigh
34 medical and actuarial data; the information this

1 projection is based on; and the relationship of the
2 projection maker to the viatical settlement provider, if
3 any.

4 Disclosure to an investor shall include distribution of a
5 brochure describing the process of investment in viatical
6 settlements. The National Association of Insurance
7 Commissioners' form for the brochure shall be used unless one
8 is developed by the Director.

9 (k) A viatical settlement provider shall provide the
10 viatical settlement purchaser with at least the following
11 disclosures no later than at the time of the assignment,
12 transfer, or sale of all or a portion of an insurance policy.
13 The disclosures shall be contained in a document signed by
14 the viatical settlement purchaser and viatical settlement
15 provider or viatical settlement investment agent, and shall
16 make all of the following disclosures to the viatical
17 settlement purchaser:

18 (1) A disclosure of all the life expectancy
19 certifications obtained by the provider in the process of
20 determining the price paid to the viator.

21 (2) A statement of whether premium payments or
22 other costs related to the policy have been escrowed. If
23 escrowed, a statement of the date upon which the escrowed
24 funds will be depleted and whether the purchaser will be
25 responsible for payment of premiums thereafter and, if
26 so, the amount of the premiums.

27 (3) A statement of whether premium payments or
28 other costs related to the policy have been waived. If
29 waived, a disclosure of whether the investor will be
30 responsible for payment of the premiums if the insurer
31 that wrote the policy terminates the waiver after
32 purchase and the amount of those premiums.

33 (4) A disclosure of the type of policy offered or
34 sold, i.e., whole life, term life, universal life, or a

1 group policy certificate, any additional benefits
2 contained in the policy, and the current status of the
3 policy.

4 (5) If the policy is term insurance, a disclosure
5 of the special risks associated with term insurance
6 including, but not limited to, the purchaser's
7 responsibility for additional premiums if the viator
8 continues the term policy at the end of the current term.

9 (6) A statement of whether the policy is
10 contestable.

11 (7) A statement of whether the insurer that wrote
12 the policy has any additional rights that could
13 negatively affect or extinguish the purchaser's rights
14 under the viatical settlement contract, what these rights
15 are, and under what conditions these rights are
16 activated.

17 (8) A statement of the name and address of the
18 person responsible for monitoring the insured's condition
19 and a description of how often the monitoring of the
20 insured's condition is done, how the date of death is
21 determined, and how and when this information will be
22 transmitted to the purchaser.

23 (l) The viatical settlement purchase agreement is
24 voidable by the purchaser at any time within 3 days after the
25 disclosures mandated by subsections (j) and (k) of this
26 Section are received by the purchaser.

27 (m) (d) The Director may promulgate a rule to assure
28 adequate disclosure is given to all potential viators.

29 (Source: P.A. 89-484, eff. 6-21-96.)

30 (215 ILCS 158/40)

31 Sec. 40. Assignment or resale of viaticated policies. A
32 viatical settlement provider may not sell, assign, transfer,
33 or pledge a viaticated policy except to another licensed

1 viatical settlement provider or a person not required to be
 2 licensed under Section 10. An insurance company licensed in
 3 this State shall not accept the assignment of a life
 4 insurance policy insuring an Illinois resident from a
 5 viatical settlement provider not licensed in this State and
 6 shall immediately notify the Director of any such attempted
 7 transaction.

8 (Source: P.A. 89-484, eff. 6-21-96.)

9 (215 ILCS 158/45)

10 Sec. 45. General rules.

11 (a) A viatical settlement provider entering into a
 12 viatical settlement contract shall first obtain:

13 (1) if the viator is the insured, a written
 14 statement from a licensed attending physician that the
 15 viator is of sound mind and under no constraint or undue
 16 influence to enter into a viatical settlement contract;

17 (2) a document in which the insured consents to the
 18 release of his or her medical records to a viatical
 19 settlement provider, viatical settlement broker, and the
 20 insurance company that issued the life insurance policy
 21 covering the life of the insured; A-viatical-settlement
 22 provider-entering-into--a--viatical--settlement--contract
 23 with--a--person--with--a--catastrophic-or-life-threatening
 24 illness-or-condition-shall-first-obtain:

25 (1)--a-written-statement-from-a--licensed--attending
 26 physician--that--the-person-is-of-sound-mind-and-under-no
 27 constraint-or-undue-influence;-and

28 (3) (2) a witnessed document in which the person
 29 consents to the viatical settlement contract,
 30 acknowledges the catastrophic or life threatening
 31 illness, represents that he or she has a full and
 32 complete understanding of the viatical settlement
 33 contract, that he or she has a full and complete

1 understanding of the benefits of the life insurance
2 policy, releases his or her medical records, and
3 acknowledges that he or she has entered into the viatical
4 settlement contract freely and voluntarily; and-

5 (4) (b) All medical information solicited or
6 obtained by a licensee shall be subject to the applicable
7 provision of State law relating to confidentiality of
8 medical information.

9 (b) Within 20 days after a viator executes documents
10 necessary to transfer any rights under an insurance policy or
11 within 20 days after entering any agreement, option, promise,
12 or any other form of understanding, expressed or implied, to
13 viaticate the policy, the viatical settlement provider shall
14 give written notice to the insurer that issued that insurance
15 policy that the policy has or will become a viaticated
16 policy. The notice shall be accompanied by the documents
17 required by item (3) of subsection (a).

18 (c) The viatical provider shall deliver a copy of the
19 medical release required under item (2) of subsection (a), a
20 copy of the viator's application for the viatical settlement
21 contract, and a request for verification of coverage to the
22 insurer that issued the life policy that is the subject of
23 the viatical transaction.

24 (d) The insurer shall respond to a request for
25 verification of coverage submitted on an approved form by a
26 viatical settlement provider within 30 calendar days after
27 the date the request is received and shall indicate whether,
28 based on the medical evidence and documents provided, the
29 insurer intends to pursue an investigation at this time
30 regarding the validity of the insurance contract.

31 (e) If a viatical settlement broker performs any of the
32 activities required of the viatical settlement provider, the
33 provider is deemed to have fulfilled the requirements of this
34 Section.

1 (f) The purchaser shall have the right to rescind a
2 viatical settlement contract within 3 days after the
3 disclosures mandated under subsections (j) and (k) of Section
4 35 are received by the purchaser.

5 (g) Contacts with the insured for the purpose of
6 determining the health status of the insured by the viatical
7 settlement provider or viatical settlement broker after the
8 viatical settlement has occurred shall only be made by a
9 viatical settlement provider or viatical settlement broker
10 licensed in this State or its authorized representatives and
11 shall be limited to once every 3 months for insureds with a
12 life expectancy of more than one year and to no more than
13 once per month for insureds with a life expectancy of one
14 year or less. The viatical settlement provider or viatical
15 settlement broker shall explain the procedure for these
16 contacts at the time the viatical settlement contract is
17 entered into. The limitations set forth in this subsection
18 shall not apply to any contacts with an insured for reasons
19 other than determining the insured's health status. Viatical
20 settlement providers and viatical settlement brokers shall be
21 responsible for the actions of their authorized
22 representatives.

23 (h) (e) All viatical settlement contracts entered into
24 in this State shall provide the viator with an unconditional
25 right to rescind the contract for at least 30 days from the
26 date the contract is executed or 15 days from the receipt of
27 the viatical settlement proceeds, whichever is less. If the
28 insured dies during such rescission periods, the contract
29 shall be deemed to have been rescinded subject, however, to
30 repayment to the viatical settlement provider of any viatical
31 settlement payments.

32 (i) The viatical settlement provider shall instruct the
33 viator to send the executed documents required to effect the
34 change in ownership, assignment, or change in beneficiary

1 directly to the independent escrow agent. Within 3 business
2 days after the date the escrow agent receives the document
3 (or from the date the viatical settlement provider receives
4 the documents, if the viator erroneously provides the
5 documents directly to the provider), the provider shall pay
6 or transfer the proceeds of the viatical settlement into an
7 escrow or trust account maintained in a state or
8 federally-chartered financial institution whose deposits are
9 insured by the Federal Deposit Insurance Corporation (FDIC).
10 Upon payment of the settlement proceeds into the escrow
11 account, the escrow agent shall deliver the original change
12 in ownership, assignment, or beneficiary forms to the
13 viatical settlement provider or related provider trust. Upon
14 the escrow agent's receipt of the acknowledgment of the
15 properly completed transfer of ownership, assignment, or
16 designation of beneficiary from the insurance company, the
17 escrow agent shall pay the settlement proceeds to the viator.

18 (j) Failure to tender consideration to the viator for
19 the viatical settlement contract within the time disclosed
20 pursuant to item (6) of subsection (a) of Section 35 renders
21 the viatical settlement contract voidable by the viator for
22 lack of consideration until the time consideration is
23 tendered to and accepted by the viator.

24 ~~(d)--Immediately--upon--receipt--from--the--viator--of~~
25 ~~documents-to-effect-the-transfer-of-the-insurance-policy,-the~~
26 ~~viatical-settlement-provider-shall-pay-the-entire-proceeds-of~~
27 ~~the--settlement-into-an-escrow-or-trust-account-managed-by-an~~
28 ~~escrow-agent-or-trustee-in-a--state--or--federally--chartered~~
29 ~~financial-institution-that-is-a-member-of-the-Federal-Reserve~~
30 ~~System--pending--acknowledgment-of-the-transfer-by-the-issuer~~
31 ~~of-the-policy.--The-trustee-or-escrow-agent-shall-be-required~~
32 ~~to-transfer-the-proceeds-due-to-the-viator--immediately--upon~~
33 ~~receipt-of-acknowledgment-of-the-transfer-from-the-insurer.~~

34 ~~(e)--Failure--to--tender--the--viatical-settlement-by-the~~

1 ~~date-disclosed-to-the-visitor-renders-the-contract-a-nullity.~~

2 (k) (f) A viatical settlement agent may not receive a
3 fee, commission, or other valuable consideration for his or
4 her services involving unlicensed viatical settlement
5 providers with respect to (1) viatical settlements or (2) the
6 assignment or resale of viaticated policies.

7 (l) (g) A viatical settlement provider may not pay a
8 person not appointed as an agent by that provider any fee,
9 commission, or other valuable consideration for his or her
10 services with respect to (1) viatical settlements or (2) the
11 assignment or resale of viaticated policies.

12 (m) (h) A viatical settlement provider or viatical
13 settlement agent shall not pay or offer to pay any referral
14 or finder's fee, commission, or other compensation to
15 visitor's physician, attorney, or accountant.

16 (n) (i) A viatical settlement agent may not receive any
17 compensation from a prospective visitor or a visitor.

18 (o) (j) If the visitor rescinds the viatical settlement
19 contract, the viatical settlement provider shall notify the
20 issuer of the insurance policy of the rescision. The
21 notification shall be made by the viatical settlement
22 provider to the issuer of the insurance policy within 20 days
23 from the date the viatical settlement provider receives the
24 rescision request from the visitor.

25 (Source: P.A. 89-484, eff. 6-21-96.)

26 (215 ILCS 158/47 new)

27 Sec. 47. Prohibited practices.

28 (a) It is a violation of this Act for any person to
29 enter into a viatical settlement contract within a 2-year
30 period commencing with the date of issuance of the insurance
31 policy or certificate unless the visitor certifies to the
32 viatical settlement provider that one or more of the
33 following conditions have been met within the 2-year period:

1 (1) The policy was issued upon the viator's
2 exercise of conversion rights arising out of a group or
3 individual policy, provided the total of the time covered
4 under the conversion policy plus the time covered under
5 the prior policy is at least 24 months. The time covered
6 under a group policy shall be calculated without regard
7 to any change in insurance carriers, provided the
8 coverage has been continuous and under the same group
9 sponsorship.

10 (2) The viator is a charitable organization exempt
11 from taxation under 26 U.S.C. Sec. 501 (c)(3).

12 (3) The viator is not a natural person.

13 (4) The viator submits independent evidence to the
14 viatical settlement provider that one or more of the
15 following conditions have been met within the 2-year
16 period:

17 (A) the viator or insured is terminally or
18 chronically ill;

19 (B) the viator's spouse dies;

20 (C) the viator divorces his or her spouse;

21 (D) the viator retires from full-time
22 employment;

23 (E) the viator becomes physically or mentally
24 disabled and a physician determines that the
25 disability prevents the viator from maintaining
26 full-time employment;

27 (F) the viator was the insured's employer at
28 the time the policy or certificate was issued and
29 the employment relationship terminated; or

30 (G) a final order, judgment, or decree is
31 entered by a court of competent jurisdiction, on the
32 application of a creditor of the viator,
33 adjudicating the viator bankrupt or insolvent, or
34 approving a petition seeking reorganization of the

1 viator or appointing a receiver, trustee, or
2 liquidator to all or a substantial part of the
3 viator's assets.

4 (b) Copies of the independent evidence described in item
5 (4) of subsection (a) and documents required by subsection
6 (a) of Section 35 shall be submitted to the insurer when the
7 viatical settlement provider submits a request to the insurer
8 for verification of coverage. The copies shall be accompanied
9 by a letter of attestation from the viatical settlement
10 provider that the copies are true and correct copies of the
11 documents received by the viatical settlement provider.

12 (c) If the viatical settlement provider submits to the
13 insurer a copy of the owner or insured's certification
14 described in subsection (k) of Section 35 when the provider
15 submits a request to the insurer to effect the transfer of
16 the policy or certificate to the viatical settlement
17 provider, the copy shall be deemed to conclusively establish
18 that the viatical settlement contract satisfies the
19 requirements of this Section and the insurer shall timely
20 respond to the request.

21 (215 ILCS 158/49 new)

22 Sec. 49. Unfair trade practices. A violation of this Act
23 shall be considered an unfair trade practice under Article IX
24 of the Illinois Insurance Code subject to the penalties
25 contained in that Code.

26 (215 ILCS 158/50)

27 Sec. 50. Authority to promulgate standards. The Director
28 shall have the authority to do all the following:

29 (1) Issue rules implementing this Act.

30 (2) Establish standards for evaluating reasonableness of
31 payments under viatical settlement contracts for persons who
32 are terminally or chronically ill. This authority includes,

1 but is not limited to, regulation of discount rates used to
2 determine the amount paid in exchange for assignment,
3 transfer, sale, devise, or bequest of a benefit under a life
4 insurance policy.

5 (3) Establish licensing requirements and fees for
6 viatical settlement providers and viatical settlement agents.

7 (4) Establish standards for solicitation and disclosure
8 including, but not limited to, regulation of disclosure
9 requirements and advertising.

10 (5) Establish standards for examination of viatical
11 settlement providers and viatical settlement agents.

12 (6) Require a bond or other mechanism for financial
13 accountability for viatical settlement providers.

14 (7) Adopt rules governing the relationship and
15 responsibilities of both insurers and viatical settlement
16 providers (and viatical settlement investment agents) during
17 the viatication of a life insurance policy or certificate.

18 (Source: P.A. 89-484, eff. 6-21-96.)